

SECRET

OGC 70-1744

15 October 1970

MEMORANDUM FOR THE RECORD

SUBJECT: Enforcement of Prohibition Against Employee Publications

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1 The current secrecy agreement, which in accordance with [] is signed by all new employees, prohibits employees from publishing or participating in the publishing of any "material relating to the Agency, its activities or intelligence activities generally, either during or after the term" of the individuals employed by the Agency "without specific prior approval by the Agency". Earlier regulations and secrecy agreements, I believe, followed a similar pattern. Notwithstanding this arrangement, at least one former employee has published an article concerning classified CIA activities and on at least one other occasion the Agency has been concerned that a former employee was going to publish. It is believed the Agency's ability to actually prevent, as distinguished from merely prohibit, publication might be enhanced by adding to the secrecy agreement a provision whereby the employee assigns to the Government any royalties or money due him from publication in violation of the secrecy agreement. A provision such as the following could be used:

(I agree that I will not write or publish, or agree to write or publish, or assist in the writing or publishing of, any story, article, book or other work, either factual or fictional, or prepare or deliver a public speech or talk, either factual or fictional, or appear on any radio, television, film or tape program, which in any way is based on knowledge or information obtained from my employment with CIA and involves or has to do with CIA or its operations, programs, organization,

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structure or personnel, or with any intelligence agency or activity of the United States, without the prior approval of CIA. Further, if I should take any action in violation of this paragraph, or agree or threaten to take any action in violation, I hereby assign to the United States Government all rights and interests in all royalties and other monies which may be due me therefrom and I authorize and direct that any such royalties and monies be paid over to the United States Government by the publisher or other person or organization from whom they are due.

2. Inclusion of language such as the above might be effective by any of three ways:

- a. The employee or former employee might refrain from publishing not because he has so promised or because the regulation so requires, but because he would not make money by publishing.
- b. A prospective publisher might decline to publish either out of a sense of cooperation and patriotism or from a desire to avoid any dispute over payment of royalties.
- c. If neither the former employee nor the prospective publisher is willing to forego publishing, it might be that in litigation an injunction could be obtained directing them not to publish.

No court decisions enforcing such a provision are known to exist. Also, there might be some problems in trying a case while also protecting the classified information. Nevertheless, use of such a provision would seem beneficial. The problems of protecting information during trial doubtless could be handled in nearly every instance. Courts have attached significance to the fact that an employee or former employee had signed a secrecy agreement. And court decisions in enforcing trade secrets suggest that there would be some chance of success in obtaining an injunction.

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Associate General Counsel

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Remarks:

Please include the attached in
Job Number 72-310 Box 4 in folder marked

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Thank you

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